

13-1401. Definitions: factors

A. In this chapter, unless the context otherwise requires:

1. "Oral sexual contact" means oral contact with the penis, vulva or anus.
  2. "Position of trust" means a person who is or was any of the following:
    - (a) The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
    - (b) The minor's teacher.
    - (c) The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
    - (d) The minor's clergyman or priest.
    - (e) Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.
  3. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
  4. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.
  5. "Spouse" means a person who is legally married and cohabiting.
  6. "Teacher" means a certificated teacher as defined in section 15-501 or any other person who provides instruction to pupils in any school district, charter school or accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.
  7. "Without consent" includes any of the following:
    - (a) The victim is coerced by the immediate use or threatened use of force against a person or property.
    - (b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For the purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
    - (c) The victim is intentionally deceived as to the nature of the act.
    - (d) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.
- B. The following factors may be considered in determining whether a relationship is currently or was previously a sexual or romantic relationship pursuant to subsection A, paragraph 2, subdivision (e) of this section:

1. The type of relationship.

2. The length of the relationship.
3. The frequency of the interaction between the two persons.
4. If the relationship has terminated, the length of time since the termination.

**13-1402. Indecent exposure; exception; classification**

A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure does not include an act of breast-feeding by a mother.

C. Indecent exposure to a person who is fifteen or more years of age is a class 1 misdemeanor, except that it is a class 6 felony if the defendant has two or more prior convictions for a violation of this section or has one or more prior convictions for a violation of section 13-1406. Indecent exposure to a person who is under fifteen years of age is a class 6 felony.

D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or section 13-1403 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age is guilty of a class 3 felony and shall be sentenced to a term of imprisonment as follows:

| <u>Mitigated</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> | <u>Aggravated</u> |
|------------------|----------------|--------------------|----------------|-------------------|
| 6 years          | 8 years        | 10 years           | 12 years       | 15 years          |

E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

**13-1403. Public sexual indecency; public sexual indecency to a minor; classification**

A. A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:

1. An act of sexual contact.
2. An act of oral sexual contact.
3. An act of sexual intercourse.
4. An act of bestiality.

B. A person commits public sexual indecency to a minor if the person intentionally or knowingly engages in any of the acts listed in subsection A of this section and such person is reckless about whether a minor who is under fifteen years of age is present.

C. Public sexual indecency is a class 1 misdemeanor. Public sexual indecency to a minor is a class 5 felony.

D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or section 13-1402 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age shall be sentenced to a term of imprisonment as follows:

| <u>Mitigated</u> | <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> | <u>Aggravated</u> |
|------------------|----------------|--------------------|----------------|-------------------|
| 6 years          | 8 years        | 10 years           | 12 years       | 15 years          |

E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

#### 13-1404. Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

#### 13-1405. Sexual conduct with a minor; classification

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was in a position of trust and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed has been served or commuted.

#### 13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 5.25 years     | 7 years            | 14 years       |

The term for a defendant who has one historical prior felony conviction is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 7 years        | 10.5 years         | 21 years       |

The term for a defendant who has two or more historical prior felony convictions is as follows:

| <u>Minimum</u> | <u>Presumptive</u> | <u>Maximum</u> |
|----------------|--------------------|----------------|
| 14 years       | 15.75 years        | 28 years       |

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

#### 13-1407. Defenses

A. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 involving a minor if the act was done in furtherance of lawful medical practice.

B. It is a defense to a prosecution pursuant to sections 13-1404 and 13-1405 in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.

C. It is a defense to a prosecution pursuant to section 13-1402, 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person who renders emergency care at the scene of an emergency occurrence, the act consisted of administering a recognized and lawful form of treatment that was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

D. It is a defense to a prosecution pursuant to section 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to section 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.

E. It is a defense to a prosecution pursuant to section 13-1404 or 13-1410 that the defendant was not motivated by a sexual interest. It is a defense to a prosecution pursuant to section 13-1404 involving a victim under fifteen years of age that the defendant was not motivated by a sexual interest.

F. It is a defense to a prosecution pursuant to sections 13-1405 and 13-3560 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual.

**13-1408. Adultery; classification; punishment; limitation on prosecution**

A. A married person who has sexual intercourse with another than his or her spouse, and an unmarried person who has sexual intercourse with a married person not his or her spouse, commits adultery and is guilty of a class 3 misdemeanor. When the act is committed between parties only one of whom is married, both shall be punished.

B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife.

**13-1409. Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification; definitions**

A. An adult probation department employee or juvenile court employee commits unlawful sexual conduct if the employee knowingly coerces the victim to engage in sexual contact, oral sexual contact or sexual intercourse by either:

1. Threatening to negatively influence the victim's supervision or release status.
2. Offering to positively influence the victim's supervision or release status.

B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least fifteen years of age and under eighteen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

C. For the purposes of this section:

1. "Adult probation department employee or juvenile court employee" means an employee of an adult probation department or the juvenile court who either:

- (a) Through the course of employment, directly provides treatment, care, control or supervision to a victim.
- (b) Provides presentence or predisposition reports directly to a court regarding the victim.

2. "Victim" means a person who is either of the following:

- (a) Subject to conditions of release or supervision by a court.
- (b) A minor who has been referred to the juvenile court.

**13-1410. Molestation of a child; classification**

A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.

B. Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.

**13-1411. Bestiality; classification; definition**

A. A person commits bestiality by knowingly doing either of the following:

1. Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal.
2. Causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal.

B. In addition to any other penalty imposed for a violation of subsection A of this section, the court may order that the convicted person do any of the following:

1. Undergo a psychological assessment and participate in appropriate counseling at the convicted person's own expense.
2. Reimburse an animal shelter as defined in section 11-1022 for any reasonable costs incurred for the care and maintenance of any animal that was taken to the animal shelter as a result of conduct proscribed by subsection A of this section.

C. This section does not apply to:

1. Accepted veterinary medical practices performed by a licensed veterinarian or veterinary technician.
2. Insemination of animals by the same species, bred for commercial purposes.
3. Accepted animal husbandry practices that provide necessary care for animals bred for commercial purposes.

D. Bestiality is a class 6 felony, except that bestiality pursuant to subsection A, paragraph 2 of this section is a class 3 felony punishable pursuant to section 13-705 if the other person is a minor under fifteen years of age.

E. For the purposes of this section, "animal" means a nonhuman mammal, bird, reptile or amphibian, either dead or alive.

**13-1412. Unlawful sexual conduct; peace officers; classification; definitions**

A. A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation.

B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least fifteen years of age but less than eighteen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

C. This section does not apply to either of the following:

1. Any direct or indirect touching or manipulating of the genitals, anus or female breast that occurs during a lawful search.

2. An officer who is married to or who is in a romantic or sexual relationship with the person at the time of the arrest or investigation. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently a romantic or sexual relationship:

(a) The type of relationship.

(b) The length of the relationship.

(c) The frequency of the interaction between the victim and the defendant.

(d) If the relationship has terminated, the length of time since the termination.

D. For the purposes of this section:

1. "Custody" includes the imposition of actual or constructive restraint pursuant to an on-site arrest, a court order or any contact in which a reasonable person would not feel free to leave. Custody does not include detention in a correctional facility, a juvenile detention facility or a state hospital.

2. "Peace officer" has the same meaning prescribed in section 1-215 but does not include adult or juvenile corrections or detention officers.

#### 13-1413. Capacity of minor sexual assault victim to consent to medical examination

Notwithstanding any other provision of the law, when it is not possible to contact the parents or legal guardian within the short time span in which the examination should be conducted a minor twelve years of age or older alleged to be the victim of a violation of section 13-1406 may give consent to hospital, medical and surgical examination, diagnosis and care in connection with such violation. Such consent shall not be subject to incapacity because of the victim's age. The consent of the parent, parents or legal guardian of such minor shall not be necessary to authorize such hospital, medical and surgical examination, diagnosis and care, and such parent, parents or legal guardian shall not be liable for payment for any services rendered pursuant to this section.

#### 13-1414. Expenses of investigation

Any medical or forensic interview expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-705 or a sexual assault shall be paid by the county in which the offense occurred.

#### 13-1415. Human immunodeficiency virus and sexually transmitted disease testing; victim's rights; petition; definitions

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the department of health services or another licensed laboratory for the presence of the human

immunodeficiency virus and other sexually transmitted diseases. The court, within ten days, shall determine if sufficient evidence exists to indicate that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the testing be performed in compliance with rules adopted by the department of health services. The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes. The victim's name and address are confidential, except that the department of health services may disclose the information to a local health department for victim notification purposes.

C. After a specimen has been tested pursuant to subsection B of this section, the laboratory that performed the test shall report the results to the submitting entity.

D. The submitting entity shall provide the results to the department of health services or a local health department. The department of health services or a local health department shall notify the victim of the results of the test conducted pursuant to subsection B of this section and shall counsel the victim regarding the health implications of the results.

E. The submitting entity or the department of health services shall notify the person tested of the results of the test conducted pursuant to subsection B of this section and shall counsel the person regarding the health implications of the results. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the department of health services or a local health department for notification purposes.

F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.

G. For the purposes of this section:

1. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

2. "Sexually transmitted diseases" means:

(a) Chlamydia.

(b) Genital herpes.

(c) Gonorrhea.

(d) Syphilis.

(e) Trichomonas.

3. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

4. "Submitting entity" means one of the following:

(a) A local health department.



- (b) A health unit of the state department of corrections.
- (c) A health unit of any detention facility.
- (d) A physician licensed pursuant to title 32, chapter 13, 17 or 29.

**13-1416. Admissibility of minor's statement; notice**

A. Except as otherwise provided in title 8, a statement made by a minor who is under the age of ten years describing any sexual offense or physical abuse performed with, on or witnessed by the minor, which is not otherwise admissible by statute or court rule, is admissible in evidence in any criminal or civil proceeding if both of the following are true:

1. The court finds, in an in camera hearing, that the time, content and circumstances of the statement provide sufficient indicia of reliability.

2. Either of the following is true:

(a) The minor testifies at the proceedings.

(b) The minor is unavailable as a witness, provided that if the minor is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the statement.

B. A statement shall not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

**13-1417. Continuous sexual abuse of a child; classification**

A. A person who over a period of three months or more in duration engages in three or more acts in violation of section 13-1405, 13-1406 or 13-1410 with a child who is under fourteen years of age is guilty of continuous sexual abuse of a child.

B. Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to section 13-705.

C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred. The trier of fact does not need to agree on which acts constitute the requisite number.

D. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved. If more than one victim is involved, a separate count may be charged for each victim.

**13-1418. Sexual misconduct; behavioral health professionals; classification**

A. A behavioral health professional licensed pursuant to title 32, chapter 33 or a psychiatrist or psychologist licensed pursuant to title 32, chapter 13, 17 or 19.1 commits sexual misconduct by intentionally or knowingly engaging in sexual intercourse with a client who is currently under the care or supervision of the licensed behavioral health professional, psychiatrist or psychologist.

B. Sexual misconduct by a licensed behavioral health professional, psychiatrist or psychologist is a class 6 felony.

C. This section does not apply to any act of sexual conduct that occurs between a licensed behavioral health professional, psychiatrist or psychologist and a client after the client has completed a course of treatment or if the client is not under the care of the licensed behavioral health professional, psychiatrist or psychologist.

**13-1419. Unlawful sexual conduct; correctional facilities; classification; definition**

A. A person commits unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. For the purposes of this subsection, "person" means a person who:

1. Is employed by the state department of corrections or the department of juvenile corrections.
2. Is employed by a private prison facility, a juvenile detention facility or a city or county jail.
3. Contracts to provide services with the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.
4. Is an official visitor, volunteer or agency representative of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

B. This section does not apply to a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.

C. Unlawful sexual conduct with an offender who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with an offender who is between fifteen and seventeen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

D. For the purposes of this section, "any act of a sexual nature":

1. Includes the following:

(a) Any completed, attempted, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(b) Any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(c) Any act of photographing, videotaping, filming, digitally recording or otherwise viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either:

(i) While the prisoner or offender is in a state of undress or partial dress.

(ii) While the prisoner or offender is urinating or defecating.

2. Does not include an act done pursuant to a bona fide medical exam or lawful internal search.

**13-1420. Sexual offense; evidence of similar crimes; definition**

A. If the defendant is charged with committing a sexual offense, the court may admit evidence that the defendant committed past acts that would constitute a sexual offense and may consider the bearing this evidence has on any matter to which it is relevant.

B. This section does not limit the admission or consideration of evidence under any court rule.

C. For the purposes of this section, "sexual offense" means any of the following:

1. Sexual abuse in violation of section 13-1404.
2. Sexual conduct with a minor in violation of section 13-1405.
3. Sexual assault in violation of section 13-1406.
4. Sexual assault of a spouse if the offense was committed before the effective date of this amendment to this section.
5. Molestation of a child in violation of section 13-1410.
6. Continuous sexual abuse of a child in violation of section 13-1417.
7. Sexual misconduct by a behavioral health professional in violation of section 13-1418.
8. Commercial sexual exploitation of a minor in violation of section 13-3552.
9. Sexual exploitation of a minor in violation of section 13-3553.

**13-1421. Evidence relating to victim's chastity; pretrial hearing**

A. Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is one of the following:

1. Evidence of the victim's past sexual conduct with the defendant.
2. Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.
3. Evidence that supports a claim that the victim has a motive in accusing the defendant of the crime.
4. Evidence offered for the purpose of impeachment when the prosecutor puts the victim's prior sexual conduct in issue.

5. Evidence of false allegations of sexual misconduct made by the victim against others.

B. Evidence described in subsection A shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A admissible, the court may hold a hearing to determine the admissibility of the evidence under subsection A. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

**13-1422. Adult oriented businesses; location; hours of operation; injunction; classification; definitions**

A. An adult oriented business shall not be located within one-fourth mile of a child care facility, a private, public or charter school, a public playground, a public recreational facility, a residence or a place of worship. For the purposes of this subsection, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult oriented business to the nearest point on the property line of a parcel containing a child care facility, a private, public or charter school, a public playground, a public recreational facility, a residence or a place of worship. An adult oriented business lawfully operating in conformity with this section does not violate this section if a child care facility, a private, public or charter school, a public playground, a public recreational facility, a residence or a place of worship subsequently locates within one-fourth mile of the adult oriented business.

B. An adult arcade, adult bookstore or video store, adult cabaret, adult motion picture theater, adult theater, escort agency or nude model studio shall not remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on Monday through Saturday and between the hours of 1:00 a.m. and 12:00 noon on Sunday.

C. Subsection A of this section does not prohibit counties or municipalities from enacting and enforcing ordinances that regulate the location of adult oriented businesses.

D. Subsection B of this section does not prohibit counties or municipalities from enacting and enforcing ordinances that regulate an adult arcade, adult bookstore or video store, adult cabaret, adult motion picture theater, adult theater, escort agency or nude model studio in a manner that is at least as restrictive as subsection B of this section.

E. If there is reason to believe that a violation of subsection A of this section is being committed in any county or city, the county attorney of the county shall, or a citizen of this state who resides in the county or city in the citizen's own name may, maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee or agent of the building or place in or on which the violation is occurring from directly or indirectly committing or permitting the violation.

F. A violation of subsection A or B of this section is a class 1 misdemeanor. Each day of violation constitutes a separate offense.

G. For the purposes of this section:

1. "Adult arcade" has the same meaning prescribed in section 11-811.

2. "Adult bookstore or video store" has the same meaning prescribed in section 11-811.

3. "Adult cabaret" excludes any establishment licensed under title 4 and includes any nightclub, bar, restaurant or other similar commercial establishment that regularly features:

- (a) Persons who appear in a state of nudity or who are seminude.
  - (b) Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
  - (c) Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.
- 4. "Adult motion picture theater" has the same meaning prescribed in section 11-811.
  - 5. "Adult oriented business" has the same meaning prescribed in section 11-811.
  - 6. "Adult theater" has the same meaning prescribed in section 11-811.
  - 7. "Escort" means a person who for consideration agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
  - 8. "Escort agency" means a person or business association that furnishes, offers to furnish or advertises the furnishing of escorts as one of its primary business purposes for any fee, tip or other consideration.
  - 9. "Nude model studio" has the same meaning prescribed in section 11-811.
  - 10. "Nude", "nudity" or "state of nudity" has the same meaning prescribed in section 11-811.
  - 11. "Place of worship" means a structure where persons regularly assemble for worship, ceremonies, rituals and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs or architectural or other features.
  - 12. "Residence" means a permanent dwelling place.
  - 13. "Seminude" has the same meaning prescribed in section 11-811.
  - 14. "Specific anatomical areas" has the same meaning prescribed in section 11-811.
  - 15. "Specific sexual activities" has the same meaning prescribed in section 11-811.

**13-1423. Violent sexual assault; natural life sentence**

A. A person is guilty of violent sexual assault if in the course of committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.

B. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

**13-1424. Voyeurism; classification**

A. It is unlawful to knowingly invade the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation.

B. It is unlawful for a person to disclose, display, distribute or publish a photograph, videotape, film or digital recording that is made in violation of subsection A of this section without the consent or knowledge of the person depicted.

C. For the purposes of this section, a person's privacy is invaded if both of the following apply:

1. The person has a reasonable expectation that the person will not be photographed, videotaped, filmed, digitally recorded or otherwise viewed or recorded.

2. The person is photographed, videotaped, filmed, digitally recorded or otherwise viewed, with or without a device, either:

(a) While the person is in a state of undress or partial dress.

(b) While the person is engaged in sexual intercourse or sexual contact.

(c) While the person is urinating or defecating.

(d) In a manner that directly or indirectly captures or allows the viewing of the person's genitalia, buttock or female breast, whether clothed or unclothed, that is not otherwise visible to the public.

D. This section does not apply to any of the following:

1. Photographing, videotaping, filming or digitally recording for security purposes if notice of the use of the photographing, videotaping, filming or digital recording equipment is clearly posted in the location and the location is one in which the person has a reasonable expectation of privacy.

2. Photographing, videotaping, filming or digitally recording by correctional officials for security reasons or in connection with the investigation of alleged misconduct of persons on the premises of a jail or prison.

3. Photographing, videotaping, filming or digitally recording by law enforcement officers pursuant to an investigation, which is otherwise lawful.

4. The use of a child monitoring device as defined in section 13-3001.

E. A violation of subsection A or B of this section is a class 5 felony, except that a violation of subsection B of this section is a class 4 felony if the person depicted is recognizable.

**13-1425. Unlawful disclosure of images depicting states of nudity or specific sexual activities; classification; definitions**

A. It is unlawful for a person to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image if all of the following apply:

1. The person in the image is depicted in a state of nudity or is engaged in specific sexual activities.

2. The depicted person has a reasonable expectation of privacy. Evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image.

3. The image is disclosed with the intent to harm, harass, intimidate, threaten or coerce the depicted person.

B. This section does not apply to any of the following:

1. The reporting of unlawful conduct.

2. Lawful and common practices of law enforcement, criminal reporting, legal proceedings or medical treatment.

3. Images involving voluntary exposure in a public or commercial setting.

4. An interactive computer service, as defined in 47 United States Code section 230(f)(2), or an information service, as defined in 47 United States Code section 153, with regard to content wholly provided by another party.

5. Any disclosure that is made with the consent of the person who is depicted in the image.

C. A violation of this section is a class 5 felony, except that a violation of this section is a:

1. Class 4 felony if the image is disclosed by electronic means.

2. Class 1 misdemeanor if a person threatens to disclose but does not disclose an image that if disclosed would be a violation of this section.

D. For the purposes of this section:

1. "Disclose" means display, distribute, publish, advertise or offer.

2. "Disclosed by electronic means" means delivery to an e-mail address, mobile device, tablet or other electronic device and includes disclosure on a website.

3. "Harm" means physical injury, financial injury or serious emotional distress.

4. "Image" means a photograph, videotape, film or digital recording.

5. "Reasonable expectation of privacy" means the person exhibits an actual expectation of privacy and the expectation is reasonable.

6. "Specific sexual activities" has the same meaning prescribed in section 11-811, subsection D, paragraph 18, subdivisions (a) and (b).

7. "State of nudity" has the same meaning prescribed in section 11-811, subsection D, paragraph 14, subdivision (a).